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BEFORE THE ARIZONA CORPORATI

IN THE MATTER OF:

LARRY ZIEGLER (aka Zig Ziegler),
a single man;TROY DEE TRUVILLION and JENIA
DIMITROVA, husband and wife; andMOTION DNA, INC., a Nevada
corporation,

Respondents.

DOCKET NO.
S-20708A-09-0499PREHEARING
CONFERENCEAZ CORP COMMISSION
DOCKET CONTROL

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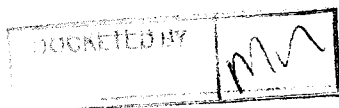
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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 100 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 10:13 a.m., on the 24th day of
6 November, 2009.

7

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BEFORE:

9

MARC E. STERN, Administrative Law Judge

10

APPEARANCES:

11

12 For the Arizona Corporation Commission Securities
Division:

13

Ms. Rachel F. Strachan
14 Staff Attorney, Securities Division
1200 West Washington Street
15 Phoenix, Arizona 85007

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For the Respondent:

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BADE & BASKIN, PLC
18 By Mr. Alan S. Baskin
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19 Tempe, Arizona 85281

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KAREN L. KESSLER, RPR
Certified Reporter
Certificate No. 50821

1 ALJ STERN: This hearing is now open, prehearing
2 conference, is now open in the matter of Larry Ziegler,
3 et al, in Docket No. S-20708A-09-0499. My name is Marc
4 Stern. I'll preside today, and we'll take appearances.
5 And on behalf of the Securities Division at this time?

6 MS. STRACHAN: Rachel Strachan.

7 ALJ STERN: And on behalf of, I believe it's one
8 respondent; is that correct?

9 MR. BASKIN: On behalf of Troy Truvillion, Alan
10 Baskin.

11 ALJ STERN: All right. And Ms. Strachan, what
12 is the status of the proceeding, presently?

13 MS. STRACHAN: Sure. Your Honor, I received
14 notice from Mr. Baskin that he will also accept service
15 for Ms. Jenia Dimitrova, the wife of respondent Troy
16 Truvillion. As of yet Mr. Baskin has not been served on
17 behalf of his client. Division investigator, Robert
18 Eckert, has been out ill and so that's why that has not
19 taken place. Mr. Eckert returned to work today, so I'm
20 anticipating sometime next week Mr. Baskin will be
21 served on behalf of Jenia Dimi -- Dimitrova will be
22 served.

23 In addition, Your Honor, Zig Ziegler, the
24 Division sent out a certified letter to Mr. Ziegler. I
25 am not sure if Mr. Ziegler has retrieved that letter or

1 not. If he does not, the Division will take additional
2 measures to ensure that Mr. Ziegler is served. But in
3 light of the fact that all the respondents have not been
4 served, I would request that this hearing be continued
5 to, I would say for about another month, to allow the
6 other respondents to be properly served.

7 MR. BASKIN: And I would ask, Mr. Stern,
8 actually, for after the February open meeting.
9 Ms. Strachan and I have been talking since before the
10 notice was filed, about resolution and, I guess
11 Ms. Strachan is going to be leaving the Securities
12 Division, but I'm hoping to continue those conversations
13 with the new counsel to this case, and I'd rather have a
14 chance to, to resolve this case over the next couple of
15 months.

16 ALJ STERN: Okay. That's with respect to your
17 clients?

18 MR. BASKIN: Correct, and plus it may take,
19 Mr. Ziegler's in California, it may take time to get him
20 into the loop.

21 ALJ STERN: Okay. All right, Ms. Strachan, does
22 that sound agreeable to you?

23 MS. STRACHAN: Yes.

24 ALJ STERN: We'll set it promptly after the
25 first of the year sometime.

1 MS. STRACHAN: That would be fine.

2 ALJ STERN: Okay, and then the question again,
3 just so we know for sure on the record, you believe
4 Mr. Huynh will take the case over since you're going to
5 be leaving?

6 MS. STRACHAN: He is for sure taking the case
7 over. And I have discussed with him the current status
8 of the case and the hearing today.

9 ALJ STERN: Okay. All right. Anything else?

10 MS. STRACHAN: No, that will do it, Your Honor.

11 MR. BASKIN: I have one request.

12 ALJ STERN: What is that?

13 MR. BASKIN: I, again, have spoke with the
14 Securities Division about resolution prior to filing the
15 notice, and in this particular case, the Division was
16 able to, to continue or, or have those negotiations, so
17 a notice has been filed.

18 At this point, there is just one piece of
19 information that I would like so that we can
20 meaningfully conduct, and hopefully conclude, the
21 settlement negotiations, which is something that we'd
22 certainly be entitled to if this matter progresses to a
23 stage that I don't wish to see it progress to. And I'd
24 just like to know the names of the investors and the
25 amounts that they invested and the dates of their

1 investment.

2 As to the -- I have asked the Securities
3 Division several times and I have been told that, either
4 through counsel or through the director, that the
5 Division does not believe it to be in the public
6 interest, pursuant to the statute. But since a notice
7 has been filed, I believe we are entitled to this
8 information; we can't settle the case without it.

9 ALJ STERN: Ms. Strachan?

10 MS. STRACHAN: Your Honor, I have not provided
11 Mr. Baskin that information pursuant to A.R.S. 44-2042;
12 as Your Honor is aware, it's our confidentiality
13 statute. I am confident that once this matter is set
14 for hearing Mr. Baskin will receive all the information
15 he needs.

16 In the meantime, Mr. Baskin can receive this
17 information from his client, Mr. Truvillion, who would
18 be the person most likely to have all the information
19 related to the investments, as well as bank statements.

20 ALJ STERN: Mr. Baskin, do you think your client
21 has some information about who invested?

22 MR. BASKIN: Your Honor, we have provided
23 information to the Securities Division, as you know.
24 The Securities Division has made the allegations, has
25 made specific allegations as to a number of investors

1 and the amount invested, and this is a, a fundamental
2 issue for us to know whom they claim the investors are,
3 when they invested, and how much they invested, and we
4 are entitled to that information. We, we're not going
5 to guess or conjecture. And that -- and we also don't
6 agree that we offered or sold in violation of the
7 Securities Act.

8 ALJ STERN: Okay, well, that --

9 MS. STRACHAN: With that being said, Your Honor,
10 I think then if they don't believe that they have
11 violated any part of the Securities Act, why is
12 Mr. Baskin asking for this information in order to
13 settle? I mean, to me, that just is not logical.

14 MR. BASKIN: Well, because as the Hearing
15 Officer knows, excuse me, as Your Honor knows, we often
16 settle without admitting or denying allegations because
17 it's in the best interest of the client to do that. And
18 that's what we hope to do here.

19 ALJ STERN: Well, I'm a little confused, because
20 when I see there is a consent order, usually somehow,
21 somehow the issue of restitution is addressed.

22 Now, I sort of think, Mr. Baskin, somehow,
23 somehow you're going to have a number in mind, correct?

24 MR. BASKIN: I may have --

25 ALJ STERN: Assuming your client's telling you

1 whatever there is, or whatever he'll provide you with,
2 right?

3 MR. BASKIN: I may have a number in mind.

4 ALJ STERN: And the Division may have a number
5 in mind. What I'm going to suggest is, and I know
6 Ms. Strachan's not going to be here too much longer, but
7 if you're dealing with Mr. Huynh, perhaps you can
8 discuss this issue with him.

9 If it will aid settlement of the matter by some
10 sort of consent order, and you're having problems,
11 perhaps I can get involved with it if you want to file a
12 motion for some disclosure, or something like that; it's
13 up to you.

14 I think usually, and, Mr. Baskin, you've been
15 here a few times, so you know pretty much what's
16 involved, so I don't want to get involved at this point.
17 What I'm going to do is, I'm going to recess this
18 matter, and we will, pending service on the parties and
19 additional requests for hearing, possibly set another
20 prehearing conference or procedural conference in the
21 future, and in the interim, maybe you can resolve it.
22 If you can't resolve it, we'll see what happens.

23 You've been pretty successful in the past, so I
24 figure somehow, someday you must know what's going on
25 with these things.

1 MS. STRACHAN: Your Honor, I just want to make
2 sure that the record is clear that the Division's hands
3 are tied at this point, because it is confidential
4 information that has been received pursuant to an
5 investigation. Whether it's myself or any of the other
6 attorneys in the office, we are still in the same
7 position, and not able to disclose it to Mr. Baskin just
8 because he's requested it in order to settle the matter.

9 MR. BASKIN: And I want the record --

10 MS. STRACHAN: So without --

11 MR. BASKIN: I'm sorry.

12 MS. STRACHAN: No, no, no, you're fine.

13 MR. BASKIN: I'm sorry, go ahead.

14 MS. STRACHAN: So without it being in the public
15 interest or without some form of a court order, we are
16 back in the same spot.

17 MR. BASKIN: And --

18 ALJ STERN: Mr. Baskin --

19 MR. BASKIN: And I just want the record to
20 reflect that it's obviously in the public interest to
21 allow respondents to know who their accusers are and to
22 allow respondents to respond to settlement, and it's in
23 the public interest to settle the case. And I want this
24 information so that we can settle the case.

25 So it is, A, within the public interest and,

1 B, within your purview to order it.

2 And I'd rather bypass having to spend time and
3 energy drafting motions to get this basic information
4 and have the Hearing Officer order the disclosure.

5 MS. STRACHAN: But, Your Honor, I think one
6 thing that's being lost here is, Mr. Baskin has the
7 opportunity, or will have the opportunity in the future
8 once this matter is set for an administrative hearing,
9 Mr. Baskin will have the opportunity to receive all this
10 information. He's saying he wants it to decide if he
11 wants to settle.

12 MR. BASKIN: Well, if we are going to receive it
13 anyhow, then why can't we have it; why do we have to
14 play this game? This is ridiculous.

15 ALJ STERN: I --

16 MS. STRACHAN: Well, it's not ridiculous,
17 Mr. Baskin, and I am addressing the Court, I just want
18 to make sure that it is clear that we have to follow the
19 law, I mean, there is, there is no way around it, we
20 can't accommodate Mr. Baskin and his clients. So in
21 order to comply with the statute, the confidentiality
22 statute, 44-2042, we are not able to disclose that
23 information to Mr. Baskin.

24 ALJ STERN: Ms. Strachan, did you, did you draft
25 the Notice of Opportunity?

1 MS. STRACHAN: I did, Your Honor.

2 ALJ STERN: Okay, finding your issue -- your
3 statement of the facts No. 20 states that Mr. Ziegler
4 and, I guess Mr. Truvi, Truv --

5 MR. BASKIN: Truvillion.

6 ALJ STERN: -- however it's pronounced, raised
7 at least \$470,000 from approximately five investors, and
8 who apparently were thinking they were, according to
9 that fact that's stated there, purchasing stock in MDNA,
10 the Nevada corporation that's alleged. I don't notice
11 any other numbers, I don't think. Are there any other
12 amounts that are alleged, Mr. Baskin?

13 MR. BASKIN: Not that I'm aware of. And the
14 Commission has deemed it in the public interest to make
15 a public filing that there were five investors and how
16 much they invested; it's certainly in the public
17 interest for a respondent to know his accusers.

18 ALJ STERN: Well, I know if we go so far as
19 we're not going to set a hearing before the date
20 Mr. Baskin was talking we'd like to try and get this
21 thing resolved, by February, and in the hopes that this
22 matter would be resolved, it would save the Commission
23 time, it would save the Commission resources, which is a
24 concern, and under the circumstances, I know that there
25 is a confidentiality statute section of the law that's

1 alluded to by Ms. Strachan, if we would go to a hearing,
2 in the normal scope of things, there would be exhibits
3 which undoubtedly would contain the names of investors,
4 and in this case I assume there are five, and an amount
5 of money, which I assume is approximately \$470,000. So
6 other than their names and the exact amount they
7 invested, I don't think it's a great secret.

8 And it would seem to me, though, Mr. Baskin,
9 that your client, in some way, shape, or form, would
10 have been able to inform you as to who, perhaps,
11 invested in this alleged stock transaction; is that
12 possible, or no.

13 MR. BASKIN: Well, again, I can't get into
14 attorney/client privilege information, but that is, but
15 that is possible.

16 ALJ STERN: Well, in the hopes of resolving
17 this, I'm going to suggest that the Division provide the
18 information to Mr. Baskin. I don't think this is
19 anything that is that far beyond the scope. If there
20 are people that the Division is relying on that maybe
21 perhaps, and for some reason, want to file a complaint
22 against Mr. Baskin's clients, so be it, but this is,
23 this is reasonable, if there -- in the hopes of
24 settlement. So I'm going to suggest an order that the
25 Division turn the names over, the alleged amounts of

1 investments, and see if the matter will resolve.

2 MS. STRACHAN: Your Honor, I just want to make
3 sure the record is clear about two things. One, this
4 record has not been, this notice has not been made
5 public. And the reason why it has not been made
6 public --

7 ALJ STERN: It's docketed, it's in the public
8 records, you can go on the Internet.

9 MS. STRACHAN: It's not on the Internet, Your
10 Honor, and I'm going to explain why.

11 ALJ STERN: Why?

12 MS. STRACHAN: Because only Mr. Truvillion has
13 been served. Ms. Dimi -- Dimitrova has not been served
14 and neither has Mr. Ziegler. So what, essentially,
15 you're asking is for the Division to release information
16 about the individual investors, even though the notice
17 has not been posted on the Internet, if somebody were
18 trying to do due diligence --

19 ALJ STERN: Wait, wait, wait. That I -- maybe
20 I'm misunderstanding something. This notice has been
21 docketed with the Commission.

22 MS. STRACHAN: Yes, it has been.

23 ALJ STERN: And if somebody goes to this docket
24 number on the Commission's Internet, they can look at
25 this notice.

1 MS. STRACHAN: They -- it's not on the Internet.
2 And it was, it was pulled off the Internet at my
3 request, because Mr. Baskin did not accept service for
4 Ms. Dimitrova.

5 ALJ STERN: Well, wait a minute. Is this, has
6 the notice been withdrawn? See I, I never heard this --

7 MS. STRACHAN: No, the notice has not been
8 withdrawn. I can't post it on the Internet, Your Honor,
9 until all the respondents have been properly served.

10 Since Ms. Dimitrova was not served through
11 Mr. Baskin originally -- and Mr. Baskin came back this
12 week and said that he would accept service for
13 Ms. Dimitrova -- once I get her served, then we should
14 be fine, but up until now, it is not on the Internet.
15 It is docketed. If somebody walks in, just like Your
16 Honor stated earlier, somebody can receive a copy of
17 this, but it is not on the Internet for public review.

18 ALJ STERN: It's not on the Internet?

19 MS. STRACHAN: It is not on the Internet. Once
20 Ms. Dimitrova is, is -- once Mr. Baskin is served on
21 behalf of his client, then it will be back up on the
22 Internet.

23 MR. BASKIN: Still -- I'm sorry.

24 MS. STRACHAN: And in addition to that, Your
25 Honor, what I'm concerned about, is how far your order

1 will go. Is it just going to be the names of the
2 individuals plus the amounts they invested, the
3 underlying records, records of the interviews that took
4 place; how far are we going to go with this?

5 ALJ STERN: I'll tell you what we're going to do
6 right now; I'm going take a recess, because I'm going to
7 go to Docket Control and I'm going to investigate this.
8 I've never -- I'm not aware of any case in which, once a
9 matter is docketed, that the notice isn't available for
10 anyone to see who comes to the Commission, who wants to
11 look into a particular docket and see what the status of
12 a particular proceeding is. And you tell me they can
13 come to the Commission, but if they were online, they
14 wouldn't be able to see this?

15 MS. STRACHAN: It's not online. And if my
16 memory serves me correctly, Your Honor, I believe we had
17 a similar situation happen in the Purvis and Wolfe
18 matter --

19 ALJ STERN: Well, now --

20 MS. STRACHAN: -- because Wolf was avoiding
21 service.

22 ALJ STERN: Well, this is, this is the first
23 time I have ever heard of this happening. Because as I
24 understand it, when something's docketed, it's open to
25 the public.

1 All right. We are going to take a little
2 recess.

3 (Recess taken from 10:28 a.m. to 10:44 a.m.)

4 ALJ STERN: Let's go back on the record. Okay,
5 Ms. Strachan.

6 MS. STRACHAN: Uh-huh?

7 ALJ STERN: I don't know who is telling you this
8 matter is not on the Internet, it is certainly on the
9 Internet. We just --

10 MS. STRACHAN: Is it really?

11 ALJ STERN: Yes, we just looked at it. There is
12 no way to remove a matter such as this from the Internet
13 without somehow, somehow getting an order to remove it,
14 because Docket Control will not remove it. And it is
15 there, and in fact, if something is removed, I'm advised
16 that -- perhaps it was misfiled -- they'll put a
17 notation as to what the status of the document was that
18 is then moved to where it should be, or something like
19 that.

20 So it is wide open, available for public
21 viewing, not through the Commission's Internet site, but
22 on the Internet. If someone is at the library, for
23 instance --

24 MS. STRACHAN: Okay.

25 ALJ STERN: -- or at home, they could --

1 MS. STRACHAN: Well, thank you for telling me
2 that, because I worked with the staff at my office and
3 they assured me it had been pulled off of the Internet.

4 ALJ STERN: There is no way to do that.

5 MS. STRACHAN: Okay. Well, thank you for
6 telling me that --

7 ALJ STERN: Short of --

8 MS. STRACHAN: -- because we never went back and
9 looked because they told me it was off, and so I
10 believed what they told me.

11 ALJ STERN: Short of withdrawing your notice
12 from, in closing this docket, there's no way to remove
13 it. And I'm not even sure then, and you'd probably need
14 an order from me or someone to do that, because the
15 docket people over there won't do that.

16 MS. STRACHAN: Okay. Well, that's the first I'm
17 hearing of it. Thank you, Your Honor, I appreciate
18 that.

19 ALJ STERN: Okay, secondly, in order to resolve
20 your objections, it probably won't solve the whole
21 situation, but, Mr. Baskin, I guess if you need that
22 information, I think I'll direct you to file a motion
23 for it, with the exception that, since it's generally
24 alleged in the pleading that there are approximately
25 five investors that invested X amount of dollars, I'm

1 going to order the Division to give you an exact number
2 of investors that they're aware of, dates of investment,
3 and amounts. I don't think there is any real breach of
4 confidentiality in that respect, since it is generally
5 alleged -- well, Mr. Baskin, your client, he knows
6 there's a few investors out there, he's borrowed some
7 people's money, or something, however this transaction's
8 alleged to have happened, then you should be able to
9 flush out the details. I don't -- because I think that
10 will help settlement, if in fact it's going to happen.

11 MR. BASKIN: And just, Mr. Stern, I wasn't, Your
12 Honor, I wasn't asking for the underlying documents at
13 this point; it was, as I said before, just the names,
14 the dates, and the amounts, that's all.

15 ALJ STERN: Well, like I say, the names we'll
16 leave off the list, but the dates and the amounts, so
17 you'll have a better idea, perhaps, maybe some people's
18 memories aren't real good and they don't have good
19 records, whatever, might help. So with that, I think
20 you can, we can do it.

21 I guess you won't be responsible for that
22 Ms. Strachan, but maybe Mr. Huynh can.

23 MS. STRACHAN: Sure.

24 ALJ STERN: Anything else?

25 MR. BASKIN: Not at this time.

1 ALJ STERN: Okay. That will put, we'll, we'll
2 recess this matter now, and I'll pick out a date
3 sometime after the first of February to reschedule,
4 hopefully.

5 And, now, let's back up just a little bit.

6 MS. STRACHAN: Okay.

7 ALJ STERN: I don't know why this is.

8 MS. STRACHAN: Uh-huh?

9 ALJ STERN: But Mr. Eckert, who apparently
10 somehow, somehow was involved in the proceeding, he is
11 your investigator, I guess, in this matter. He filed on
12 October 21st, one affidavit of service that he had
13 served Mr. Baskin for both Mr., Mr. Truvillion --

14 MS. STRACHAN: Uh-huh.

15 ALJ STERN: -- and Ms. Dimitrova, okay, and then
16 the same -- on the next day -- now that was
17 October 21st. On October 22nd, he said he served
18 Mr. Baskin for Troy Truvillion only, and not
19 Ms. Dimitrova. I don't know what the circumstances are,
20 but --

21 MS. STRACHAN: I can clarify that for the Court.

22 ALJ STERN: Oh, do you want to do that?

23 MS. STRACHAN: Yes, I will. We were under the
24 impression, myself and Mr. Eckert, that Mr. Baskin was
25 going to accept service for both the husband and the

1 wife, Mr. Truvillion and his wife Jenia. When I
2 clarified with Mr. Baskin, Mr. Baskin told me he would
3 only accept service for Mr. Truvillion, which is the
4 reason why Mr. Eckert went back and said he only served
5 Mr. Baskin for Mr. Truvillion.

6 It was only, I believe, until last week sometime
7 that Mr. Baskin advised me that he would also accept
8 service for Ms. Truvillion. He had, I believe, needed
9 additional time and had some problems reaching
10 Mr. Truvillion and/or Ms. Dimitrova to decide who he was
11 going to be accepting service for. Well, once
12 Mr. Baskin clarified that, he contacted me immediately.

13 And as I stated earlier, Mr. Eckert has been out
14 of the office all of last week and yesterday, and he
15 just returned to the office this week. So that's on
16 Mr. Eckert's list of things to do, which is immediately
17 serve Mr. Baskin for Ms. Dimitrova.

18 ALJ STERN: Okay. Another, one other question;
19 is MDNA, the corporation, is that defunct?

20 MS. STRACHAN: No, it's not a def -- oh, oh,
21 I --

22 ALJ STERN: Do you know?

23 MS. STRACHAN: I don't, I --

24 ALJ STERN: I don't know whether it's active or
25 not. I just wondered, because there is no evidence of

1 service on whoever is the statutory --

2 MS. STRACHAN: Yeah, there is no evidence of
3 service, Your Honor.

4 To answer your first question, is it defunct, I
5 don't want to misspeak, so I, I can't -- I'm going to
6 say right now I can't say, I don't know.

7 As far as service of Motion DNA, that is
8 included with the service to Mr. Ziegler. So
9 Mr. Ziegler's being served for Motion DNA, as well as
10 himself, individually.

11 ALJ STERN: Okay. All right. Thank you for
12 clarifying that.

13 And with that we'll recess and schedule this at
14 sometime in the future. And hopefully, Mr. Baskin,
15 you'll have some luck in resolving it with respect to
16 whomever you represent.

17 MR. BASKIN: Thank you.

18 MS. STRACHAN: Thank you again, Your Honor. And
19 once again I apologize for that, the information that I
20 received that it was taken off the Internet.

21 ALJ STERN: Okay, thank you and good luck.

22 (The proceedings concluded at 10:50 a.m.)

23

24

25

1 STATE OF ARIZONA)
2) ss.
3 COUNTY OF MARICOPA)
4
5
6

7 I, KAREN L. KESSLER, RPR, Certified Reporter
8 No. 50821 for the State of Arizona, do hereby certify
9 that the foregoing printed pages constitute a full, true
10 and accurate transcript of the proceedings had in the
11 foregoing matter, all done to the best of my skill and
12 ability.
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14 WITNESS my hand this 7th day of December,
15 2009.
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